**FARAD CONTINUATION SHEET.**

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**NAGPUR BENCH : NAGPUR.**

**WRIT PETITION NO.200/2005**

| Office Notes, office Memoranda of Coram appearances, Court's orders or directions and Registrar's order. | Court's or Judge's order |
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**CORAM**: **B.P. DHARMADHIKARI, J.**
**DATED** : **16.01.2006.**

1. Heard Advocate Shri M.V. Samarth for petitioners and Advocate Shri S.V. Bhutada for respondent.

2. Grievance made is that the court below was not justified in rejecting M.J.C. for restoration of H.M.P. No.61/1994 which was dismissed on 1.3.2003. It is argued that the petitioner no.1 had regularly attended the trial Court. She was ill between 27.2.2003 to

4.3.2003, and as she could not appear on 1.3.2003 the matter came to be dismissed. It was contended that the absence was justified by producing a medical certificate on record. The contention of Advocate Shri Samarth is that Court below ought to have considered medical certificate instead of insisting upon the technical requirements of its proof.

3. As against this Advocate Shri Bhutada for respondent-husband contends that on 1.3.2003 while dismissing the matter in default the Court found that wife was not remaining present since long and matter was very old. He further states that in reply respondent pointed out eleven occasions on which the petitioner-wife did not appear before the Court. He further states that in such circumstances, the petitioner ought to have proved medical certificate by examining the Doctor and in the alternative ought to have produced some other material to show that she was under medical treatment. He contends that nothing on

lines has been sought to be done and therefore the trial court which was aware of the attitude of petitioner was justified in refusing the restoration.

4. Perusal of order dated 1.3.2003 reveals that the Court dismissed the matter after observing that the matter is old and the wife is not remaining present in the Court since long. In this background when the respondent-husband came up with specific defence that on eleven dates the wife was not present when the matter was fixed for evidence, it was necessary for wife to prove by satisfactory evidence that on the relevant date she was prohibited by just and sufficient reason from appearing before the Court. The reason of illness obviously was not accepted by present respondent-husband and hence, it was necessary for her either to examine the said Doctor or to produce treatment papers and medicine bills to show that she was actually in disposed of between 27.2.2003 to 4.3.003.

5. The view taken by Court below is not

perverse. There is no jurisdictional error. No case is therefore made out for interference in writ petition. The writ petition is dismissed. No costs.

JUDGE

ssw